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West Virginia. Office of the Tax Commissioner.

Supplementary report of the State Tax...

Charleston, W. Va.

[1923]

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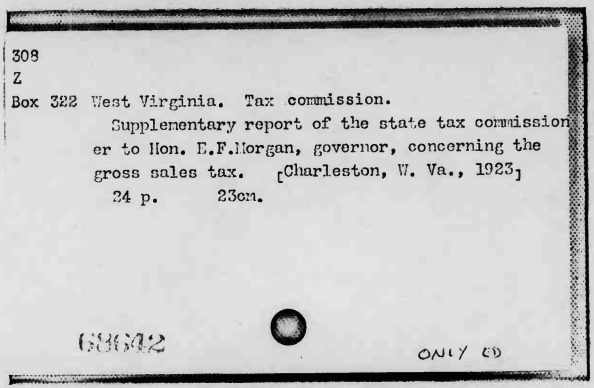
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SUPPLEMENTARY REPORT

OF THE

STATE TAX COMMISSIONER

TO

HON. E. F. MORGAN, GOVERNOR

CONCERNING THE GROSS SALES TAX

308
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Box 322

WALTER S. HALLANAN
STATE TAX COMMISSIONER

SUPPLEMENTARY REPORT

OF THE

STATE TAX COMMISSIONER

TO

HON. E. F. MORGAN, GOVERNOR

CONCERNING THE GROSS SALES TAX

WALTER S. HALLANAN
STATE TAX COMMISSIONER

JARRETT PRINTING COMPANY
CHARLESTON, W. VA.

TS Apr. 20, 1931

CHARLESTON, W. VA.,
January 22, 1923.

To His Excellency,
HONORABLE E. F. MORGAN,
Governor of West Virginia.

SIR:

Pursuant to the suggestion contained in my regular report submitted to you on the 12th of September, last, I beg to furnish additional facts and figures with respect to the sales tax law, particularly along the line of equalization of rates and suggestions as to amendments which will tend to equalize the taxes as between the several classes of taxpayers.

I have found during my six years' experience as Tax Commissioner that of all the duties imposed upon him the one paramount is that of lending his every effort towards the attainment of equality and uniformity—equalization—in the matter of the assessment and collection of taxes. I am fully convinced that the citizens of West Virginia generally want to pay their fair share of the tax burden and, further, that controversies between the various business interests occurring during the sessions of the legislature at which tax laws are considered, arise, not out of a desire to shoulder the tax burden onto the other fellow, but are due principally to the difficulty of determining the fair share of the tax burden which ought to be borne by each. I very much appreciate the importance of equalization in all sorts of taxes and I have that feature particularly in mind in submitting to you this special report.

The Business-Profession Tax, or what is more generally designated as the Sales Tax, has been in effect in West Virginia for more than a year and a half. It became effective on July 1, 1921, as a substitute for the excise tax on corporations carrying on business activities within the State. From the viewpoint of one who was not one of its original advocates, and who in fact doubted its economic merit, I have been compelled from impartial observation to recognize it as the most satisfactory form of indirect taxation that exists in any State today. There is not a State in the Union that has not faced serious problems of providing revenue to meet the rapidly

increasing cost of government. Incidentally, I may say that while our tax problems seem acute in West Virginia, they appear small when compared with soaring governmental costs in other States of like size and population. In a good number of States, the business and personal income tax has been adopted where the laws of the States permitted such revenue acts. Some of the States have ratified constitutional amendments permitting of income taxation while proposed constitutional amendments with the same purpose contemplated were rejected in a greater number of States. More recently did this occur in the State of Illinois where a new constitution was rejected overwhelmingly because it contained an income tax provision.

West Virginia's experience with the so-called Sales tax has been closely observed by taxing authorities generally. Many taxing officials have come to the State to make observation of its practical results in administration. The National Tax Association has been committed to the principle of state income taxes but the rejection of this principle in many States where it has been proposed has directed wide interest to West Virginia's unique experience in the field of indirect taxation.

There are no doubt some who would prefer an income tax in this State to our Sales tax. I believe, however, that they represent a small minority. Many are opposed to any species of indirect taxation and would have the State raise its revenue wholly from direct tax on property. Personally, I entertain the hope that the day will not be far distant when, with our extraordinary financial burdens out of the way, that we will find it possible to eliminate the direct State tax on property entirely and provide all State revenue, with the exception of our Virginia debt and other future sinking fund requirements, from indirect taxation. The extraordinary demands arising from the building of a new Capitol and the increased requirements for State aid to local schools preclude the realization of that hope within the immediate future.

The legislature of 1921 placed the Gross Sales tax principle in effect in this State. To my mind, it would be a serious blunder to depart from that principle now. Considerable money has been expended in inaugurating a method of administration, much of which would be lost if a new principle were adopted. Aside from that, however, is the more important feature that a departure from the present tax law would be annoying and offensive to a great many

people of the State who have just become acquainted with the requirements of the Sales tax and the method of making returns. Many people do not object to the payment of taxes of this character but they are irritated by the constant changing of forms of taxation. So much is this true, that I do not believe a change in the form of taxation would be justified unless there was assurance that a great benefit might be wrought to the taxpayers of the State thereby. The financial demands of the State will increase substantially for the next two years, even with the most rigid economy in administration. Extraordinary requirements make that quite certain to be recognized in spite of every tendency to reduce governmental expenditures where it may be possible. Having in mind the recommendation made in your recent message to the legislature, that any increased revenue should be provided by an increase in the Sales tax rates, I wish to express my hearty concurrence therein. We should seek, as a matter of sound public policy, to raise the large part of our State revenue from one principle of taxation which equitably and justly distributes the burden, rather than to have varied methods of taxation.

I do not think that the legislature could impose an income tax in West Virginia without a constitutional amendment. On the other hand, I do not feel that a proposed amendment providing for an income tax would meet any different fate in West Virginia than it has in a considerable number of other States. But regardless of that phase of the situation, I consider the Gross Sales Tax law superior to an income tax law for these particular reasons:

First—It is simpler and easier of administration and does not involve the irritating and inquisitional features which have characterized the administration of the income tax.

Second—It is less burdensome on the great mass of taxpayers of the State, in that the exemption of $10,000 yearly excludes the small wage earner and those of medium income who would be subject to the income tax.

Third—It provides a more dependable source of revenue for the State and at the same time permits the taxpayer to reckon his liability thereunder as a cost of carrying on business, without the injection of the many elements to be considered in a tax based wholly on profit.

It would be useless to ignore the fact that there is a widespread sentiment favoring a straight-out depletion tax on that class of business engaged in the production of coal, oil, gas, timber and other natural products. The sentiment in behalf of such a tax measure is predicated upon the theory that this class of business activity is taking away from the State's natural wealth, while other business activity is productive of wealth. It has seemed to me that those who were urging this principle of taxation overlooked the fact that the legislature of 1921 classified these business activities, excepting timber, under a general class and imposed thereon a tax for the privilege of "producing" which was twice the rate of the tax on other classes. The one essential and insurmountable objection, as I view it, to the depletion tax other than the basis provided for taxation of natural product industries under the present sales tax method, is that it is proposed to levy a flat tax on every ton of coal produced, regardless of its value. It would be just as fair to levy the same tax on every farm in the State of West Virginia or every house. The discrepancy is just as wide. Some coal produced in West Virginia today is selling for $3.00 a ton—other coal of the higher quality is selling for $7.00 or $8.00 a ton. But the depletion tax would levy the same amount per ton without regard to the value of the commodity.

The outstanding merit of the production classification under the Sales tax lies in the fact that the tax is based upon the value of the product. It is based upon one of the fundamental rules of taxation that there should be a recognition of "the ability to pay." In other words, the coal producer who has a quality of coal selling for $3.00 a ton pays his tax on that basis while the producer who receives $8.00 a ton pays upon that basis of value. I submit, in all fairness, that no more equitable principle could be laid down.

What would come within the province of a depletion tax on this class of business that is not subject to the production class of the Sales tax now? The only difference would be that under the former there would be a flat tax on production while the sales tax provides the more equitable standard of value. If it is a matter of calling upon the natural product industries of the State for more revenue than they are now paying into the treasury, and certainly in the light of the State's financial demands that must be done, it would be far more equitable to maintain the present basis of taxing production than to inaugurate a method that would operate to distribute the tax too heavily on those least able to bear it and too lightly upon those best able to pay.

I have discussed this phase of the situation frankly because I believe there are many who fail to understand the injustice that would follow the enactment of some of the methods of taxation now being proposed.

The legislature of 1921 did fairly well in the matter of equalization, in my opinion, in fixing the rates which each class of business should pay, when it is considered that only meagre information was at hand. In the light of the first year's experience in administering the sales tax law, I am convinced, however, that some classes are not paying their fair share for reasons which will be more fully explained hereinafter.

EXEMPTION OF AGRICULTURAL PURSUITS

It is my judgment, and I therefore suggest, that the Gross Sales Tax Act be so amended as to contain a proviso to the effect that all persons following the pursuits of farming, cattle raising, agriculture and horticulture should not be deemed to be engaged in business within the meaning of the Act. Reference to the table herein attached, showing the collections made from various business activities, will reflect the fact that the present $10,000 exemption has operated to exempt agricultural activities almost wholly. The effect of such a proviso would be to make the exemption of this class of occupations specific in language; and I am of the opinion that such an exemption can be made under the constitution, since the tax here involved is a privilege or excise tax.

As I understand the law, the Legislature has a great deal of latitude in the selection and classification of business and occupations for the purpose of levying privilege taxes. I believe it sound public policy to exempt from the payment of the privilege tax persons engaged in agricultural pursuits. The right to the cultivation and use of the soil for farming purposes has never been regarded in this country as a privilege upon which an excise tax can be imposed, and I do not believe that we should depart from our past policy in this respect. Many substantial reasons can be assigned in support of this policy of exemption of agricultural pursuits from the imposition of an excise tax. In the first place, West Virginia is primarily a mining and manufacturing State, and the wage scales in these industries are such as to attract able-bodied men and to produce a constant draft of laborers from the rural districts of the State. In other words, the farmer cannot compete in the labor market with mining and manufacturing industries.

The result is that there are large areas of lands in the State suitable for agricultural purposes that are lying vacant or furnishing the State a minimum of production. The State's policy should be to encourage in every possible way the development of its agricultural areas. Our topography is such that, relatively speaking, we have very few large farms; but this condition should encourage and stimulate what is known to agriculturists as intensive farming and truck gardening.

The farmers of West Virginia cannot compete with the large farmers of the Mississippi Valley and the plateau States of the West in the production of cereals where agricultural machinery can be used to great advantage and the labor problem is more favorable. And again, under the most favorable conditions our farmers cannot hope to realize large profits. Their surplus products are sold to wholesale and retail tradesmen in the cities and towns of the State where storage facilities are more favorable and the real profits upon farm products are reaped by these tradesmen.

I find it not an easy matter to arrive at figures which would properly equalize the tax burden as between the several classes of taxpayers. It has occurred to me that equalization in the rates of the sales tax might be approached by a careful consideration of returns filed under the corporate net income tax law. It is generally admitted, I believe, that the corporate net income tax was fair as between all classes of corporations. So I have used 1,413 returns filed by corporations under the old Excise Tax law covering the years 1919 and 1920 upon which to base the figures herein set forth.

The year 1919, as to excise tax on net income, might be considered as being fairly normal while for the year 1920 the excise tax collections from coal, oil and gas companies were unusually large and the net income of manufacturers was considerably above normal. It will be recalled that the peak of post-war prices was reached in 1920. It is not likely that they will soon be lowered to the prices prevailing prior to that year.

Taking 1,413 returns filed under the law which imposed a tax on corporate net income (311 those of producers, 309 manufacturers, 309 sellers except at wholesale, 132 sellers at wholesale, 117 banks and public utilities and 235 other businesses, and professions) covering their 1919 and 1920 business and, for the sake of comparison,

assuming that the excise tax law and the sales tax law were both in operation and affecting 1919 and 1920 business, I find the following comparison for the year 1919:

Class	No. of companies used in making calculations	Gross Sales Tax	Excise Tax on net income	Increase of Sales Tax over Excise Tax
Production	111	$402,116.00	$121,062.00	232%
Manufacture	109	216,966.00	73,322.00	196%
Sales except at wholesale	109	47,514.00	14,465.00	228%
Sales at wholesale	32	18,274.00	8,727.00	109%
Banks and Public Utilities	17	53,412.00	22,341.00	139%
Other businesses and professions	35	10,843.00	6,920.00	57%

The percentages in the last column above indicate that on 1919 business, the tax rates as provided in the present sales tax law were practically uniform as to producers, manufacturers and sellers of merchandise and other property, except at wholesale; but were too low on wholesalers, banks, public utilities, professions and "other businesses."

And I find the following comparison for the year 1920:

Class	No. of companies used in making calculations	Gross Sales Tax	Excise Tax on net income	Increase of Sales Tax over Excise Tax
Production	200	$1,059,390.00	$540,658.00	96%
Manufacture	200	403,354.00	190,574.00	112%
Sales except at wholesale	200	117,418.00	25,778.00	278%
Sales at wholesale	100	36,796.00	22,338.00	65%
Banks and Public Utilities	100	88,192.00	70,586.00	25%
Other businesses and professions	200	41,879.00	29,365.00	43%

The percentages of increase of sales tax over excise tax for the year 1920 (last column above) indicate that as between the producers and manufacturers the tax rates provided in the present law were fairly equitable; that the rates on sellers of property except at wholesale were high; and that the rates were too low on wholesalers, banks, public utilities, professions and "other businesses."

Striking an average by throwing all the figures as to sales tax and excise tax for the years 1919 and 1920 together, the following increase of sales tax over excise tax on the basis of the 1,413 returns would be found:

Class	No. of companies used in making calculations	Gross Sales Tax	Excise Tax on net income	Increase of Sales Tax over Excise Tax
Production	311	$1,461,506.00	$661,720.00	121%
Manufacture	309	620,320.00	263,896.00	135%
Sales except at wholesale	309	164,932.00	40,243.00	260%
Sales at wholesale	132	55,070.00	31,065.00	77%
Banks and Public Utilities	117	141,604.00	92,927.00	52%
Other businesses and professions	235	52,722.00	36,285.00	45%

Having in mind your statement in your message to the 1923 legislature—" * * * * I recommend that with such changes, modification and adjustment of rates as you may deem just and equitable, that the rates under the present 'gross sales tax law' be increased so as to yield the additional revenue"—I have worked out a basis of adjusted rates that would be required to produce a revenue of $5,400,000 and which would be equitable and fair to all interests, in my opinion. On this basis the tax rate on production would be fixed at 1%, instead of two-fifths of 1%, the present rate; the tax rate on manufacture would be fixed at one-half of 1%, instead of the present rate of one--fifth of 1%; the tax rate on sellers of property, except at wholesale, would be fixed at three-tenths of 1%, in lieu of the present rate of one-fifth of 1%; the rate on wholesalers would be fixed at 1% on gross profits or, better, one-fifth of 1% on sales, instead of the present basis of one-third of 1% on gross profits; the tax rate on banks would be fixed at three-fifths of 1%, the tax rate on public utilities would be fixed at two-fifths of 1%, and the tax rate on professions and other businesses would be fixed at three-fifths of 1%, in substitution for the old rates of one fifth of 1%.

These proposed rates applied on the last year's business would have raised approximately $4,450,000, and it is assumed that improvement in business conditions and the normal increase in business enterprises, together with the reclassifications suggested, would raise this figure to approximately $5,400,000 per year.

Using the same basis—that is, the specific exemption as at present, $10,000, the law amended so as to include logging in the production class carrying the higher rate and the law amended so as to provide that the measure of the tax in the case of interstate public utilities shall include the State's proportion of interstate business in addition to their intrastate business—to yield a revenue of $4,500,000, the rates necessary to be imposed would be as follows: On production, 4/5 of 1% as against the 2/5 of 1% rate now provided, or $8.00 as against $4.00 per thousand dollars' sales proceeds; on manufacture, 3/8 of 1% as against the present rate of 1/5 of 1%, or $3.75 per thousand dollars' sales proceeds instead of $2.00; on sellers of property, except at wholesale, 1/4 of 1% as against the present rate of 1/5 of 1%, or $2.50 per thousand dollars' gross sales instead of $2.00; on wholesalers, $1.75 per thousand dollars' gross sales instead of the present rate of $3.33 per thousand dollars' gross profits; on banks, 1/2 of 1% on their gross income as compared with the present rate of 1/5 of 1%, or $5.00 per thousand dollars' gross income instead of $2.00; on public utilities, 3/8 of 1% on gross income as compared with the present rate of 1/5 of 1%, or $3.75 per thousand dollars' gross income instead of $2.00; and on other businesses, and professions, 1/2 of 1% on their gross income as against the present rate of 1/5 of 1%, or $5.00 per thousand dollars' gross income instead of $2.00.

The following tables—one showing the collections under the sales tax law on account of business done by taxpayers for the full year ended June 30, 1922, the other the collections received on account of the sales tax from July 1, 1921, to December 31, 1922, are submitted for whatever value they may have. These tables show the collections by counties and also the amounts paid by different classes of businesses within the various counties.

On a consideration of the table showing the collections by counties, it should be noted that our records are arranged so as to show the taxpayer in the county in which are kept his books of account; so that the figures for Barbour County, for instance, for production, $4,681.03, do not necessarily mean that that amount accrued upon the value of the production in Barbour County. If operations were carried on in that county by persons and companies whose principal offices were in Fairmont, say, the table would not show the full amount of tax which should be credited to Barbour County, and would show for Marion County more than its proper share.

COLLECTIONS RECEIVED UNDER THE SALES TAX LAW ON ACCOUNT OF BUSINESS DONE BY TAXPAYERS FROM JULY 1, 1921 TO JUNE 30, 1922

County	A-1 On Production	A-2 On Manufacture	B-1 On Sales of Tangible Property (Except at Wholesale)	B-2 On Sales at Wholesale	C On Banks and Public Utilities	D On Other Businesses & Professions	TOTAL
Barbour	$ 4,681.03	$ 332.67	$ 1,223.35	$ 137.83	$ 17.89	$ 311.78	$ 6,704.55
Berkeley	6,135.39	16,080.05	5,319.80	336.87	318.49	927.73	29,118.33
Boone	6,862.54	875.57	690.70		25.80	84.67	8,539.28
Braxton	706.42	1,122.51	1,292.73	134.87	111.58	124.23	3,492.34
Brooke	12,600.94	24,292.71	4,032.85		191.70	233.05	41,351.25
Cabell	48,433.69	39,683.37	35,856.93	6,233.60	2,129.57	12,318.51	144,655.67
Calhoun	79.95		392.79		54.20	87.05	613.99
Clay	6,769.52		209.48		213.87	84.53	7,277.37
Doddridge	12,088.03	114.65	1,342.30	35.17	47.77	165.96	13,793.88
Fayette	58,193.61	4,663.61	6,312.32	261.33	498.25	1,348.54	71,277.66
Gilmer	21.70	6.08	453.04		43.69	24.17	548.68
Grant		44.74	322.34		12.13	75.26	454.47
Greenbrier	1,745.25	2,417.25	2,599.69	440.35	1,354.47	2,263.03	10,820.04
Hampshire		216.77	421.35		49.79	64.57	752.48
Hancock	249.15	52,543.19	2,845.14	9.28	95.57	166.36	55,908.69
Hardy		19.64	2,049.12			98.65	2,167.41
Harrison	71,119.66	17,565.92	23,479.62	3,314.00	808.35	5,638.43	121,925.98
Jackson		88.78	935.50	142.43	30.65	102.61	1,299.97
Jefferson	987.41	4,612.16	1,530.36		122.17	303.86	7,555.96
Kanawha	103,713.78	40,515.39	47,729.99	8,391.96	13,459.02	19,036.41	232,846.55
Lewis	566.04	1,813.72	4,010.22	156.33	454.22	504.25	7,504.78
Lincoln	860.42		1,090.70		1.70	14.00	1,966.82
Logan	92,018.69	1,172.09	5,500.52	2,138.13	318.30	1,970.30	103,118.03
Marion	41,096.84	8,878.89	16,297.34	955.75	12,943.42	7,176.95	87,349.19
Marshall	14,057.58	8,872.16	4,990.06	320.46	499.82	338.34	29,078.42
Mason	248.71	1,593.96	1,548.01	35.05	117.57	1,022.85	4,566.15
Mercer	45,032.26	3,777.78	16,172.56	4,164.69	2,358.64	6,199.75	77,705.68
Mineral	1,434.29	937.89	2,641.63	101.79	44.54	369.85	5,529.99
Mingo	11,439.34	596.28	4,223.67	1,419.61	71.67	1,071.51	18,822.08
Monongalia	20,200.43	14,178.78	12,190.46	741.05	895.19	2,403.15	50,609.06
Monroe	237.65	233.83	561.91	247.78	18.75	284.75	1,584.67
Morgan	1,745.34	1,331.45	685.71		22.87	79.15	3,864.52
McDowell	120,386.34	1,381.80	14,000.69	357.39	189.14	1,603.81	137,919.17
Nicholas	1,942.09	11,002.53	2,583.80		88.59	446.82	16,063.83
Ohio	29,968.98	99,359.95	50,138.08	3,791.94	7,399.22	10,899.42	201,557.59
Pendleton			242.30		39.81	41.61	323.72
Pleasants	1,219.15	2,091.76	997.44	5.60	20.52	42.87	4,377.34
Pocahontas		4,429.07	2,196.87	31.76	416.86	145.80	7,220.36
Preston	4,880.74	1,762.35	2,651.92	74.36	122.87	385.61	9,877.85
Putnam	2,049.90	540.71	374.89	14.30	17.13	2,459.28	5,456.21
Raleigh	47,596.79	2,890.44	7,410.12	592.17	734.93	2,226.84	61,451.29
Randolph	8,094.82	7,930.38	3,117.16	570.88	310.01	1,027.01	21,050.26
Ritchie	59.83	1,724.24	1,317.41	356.34	147.83	107.41	3,713.06
Roane	671.62	181.37	1,192.62	12.66	79.34	263.48	2,401.09
Summers	116.21	405.58	2,192.02	648.56	153.62	317.31	3,833.30
Taylor	2,586.48	3,457.70	3,403.18	110.91	217.26	325.99	10,101.52
Tucker	8,653.02	2,940.05	3,094.51		363.67	137.86	15,189.11
Tyler	4,008.91	1,482.45	1,748.06	164.71	332.74	471.26	8,208.13
Upshur	1,414.78	2,045.56	2,138.77	209.72	281.88	337.63	6,428.34
Wayne	263.73	2,884.31	773.85	53.23	5.66	167.85	4,148.63

County	A-1 On Production	A-2 On Manufacture	B-1 On Sales of Tangible Property (Except at Wholesale)	B-2 On Sales at Wholesale	C On Banks and Public Utilities	D On Other Businesses & Professions	TOTAL
Webster	17.83	416.57	347.23		.30	59.68	841.61
Wetzel	493.14	2,769.80	2,293.58	117.95	155.76	299.44	6,129.67
Wirt	34.49		197.37		16.91	48.75	297.52
Wood	9,946.00	39,950.46	17,007.40	1,921.95	861.68	2,726.15	72,413.64
Wyoming	10,217.12	3,020.67	726.90	172.73	56.54	210.85	14,404.81
Total Counties	817,947.63	441,249.64	329,098.36	38,925.49	49,343.89	89,646.98	1,766,211.99
*Miscellaneous	94,059.38	37,520.60	17,156.17	3,013.84	44,426.88	2,993.61	199,170.48
GRAND TOTALS	$ 912,007.01	$ 478,770.24	$ 346,254.53	$ 41,939.33	$ 93,770.77	$ 92,640.59	$1,965,382.47

NOTE.—In considering the above table, it should be kept in mind that the tax commissioner's records are arranged so as to show the taxpayer in the county in which are kept his books of account; so that the figures for Barbour County, for instance, for production, $4,881.08, do not necessarily mean that that amount was based upon the value of the production in Barbour County. If operations were carried on in that county for less than 12 months, or if the principal business was carried on in another county, the tax would be shown in the latter county. Companies whose principal business is the production of oil and gas, for instance, would be credited to Barbour County, although the production may be in some other county. Banks and public utilities, the head offices of those engaged in such activities being usually located in some nearby center, not necessarily in the same county as the operations.

The other columns showing the distribution of taxes received from manufacturers, sellers of property and other businesses and professions substantially reflect the business in the respective counties.

*The amounts shown in this line are those paid by taxpayers whose principal offices are located in other states.

SALES TAX COLLECTIONS
FROM JULY 1, 1921 TO AND INCLUDING DECEMBER 31, 1922

Production of Minerals

101	Coal	$ 925,302.79	
102	Sand—Limestone	21,230.11	
103	Oil—Gas	249,673.46	
			$ 1,196,206.36

Manufacturing

201	Cloth, Clothing, Notions	$ 41,768.23	
202	Iron—Steel	152,022.57	
203	Furniture, Matresses	8,759.93	
204	Glass	95,851.67	
205	Wood Products	11,806.13	
206	Newspaper Publishers	7,672.89	
207	Paint—Varnishes	472.58	
208	Flour—Feed Millers	13,431.53	
209	Soft Drinks	3,816.40	
210	Job Printing	3,931.77	
211	Lumber, Saw & Planing Mills	48,260.97	
212	Paper Products	7,608.41	
213	Potteries	6,666.24	
214	Machinery and Tools	3,214.47	
215	China (including decorating)	15,588.52	
216	Refiners of Petroleum and Gasoline	30,496.92	
217	Chemicals and Dyestuffs	26,229.19	
218	Bakers	11,722.48	
219	Brass Goods, Tins and Enamel Ware	11,342.96	
220	Shoes	3,735.54	
221	Tanners	15,597.11	
222	Boxes and Crates	2,053.48	
223	Tobacco and Tobacco Products	17,880.36	
224	Ice	4,535.12	
225	Sand and Clay Products, Stone, Lime	16,952.25	
226	Electric Power & Light	29,883.63	
227	Mine Cars, Elevators	1,337.00	
228	Ice Cream & Candy	6,781.99	
229	Carbon & Carbon Products	7,070.87	
230	Meat Packers, Canners	6,306.05	
231	Food & Dairy Products, Provisions	4,495.89	
232	Plumbing, Heating, Water & Gas Supplies	2,399.63	
233	Fibre Products, Brooms, etc.	694.52	
234	Rubber	3,663.70	
235	Leather Goods, Harness, etc.	644.32	
236	Electrical Supplies	985.04	
237	Oil Well Supplies	5,564.24	
238	Coke & By-Products	2,855.25	
239	Automobiles, Wagons & Parts	121.53	
			$ 634,221.38

Selling Tangible Property
(except by wholesalers)

301	Department Stores	$ 41,995.53
302	Coal Company Stores	2,053.66
303	Clothing & Furnishings	29,092.40

304	Lumber	21,985.60	
305	Jewelers	3,937.23	
306	Grocers & Fruit Dealers	35,157.69	
307	Dry Goods & Notions	21,029.01	
308	Furniture, Undertaking & Tombstones	20,395.34	
309	Meats, Fish & Oysters	9,475.30	
310	Real Estate (not on commission basis)	2,659.11	
311	General Merchandise	76,014.83	
312	Millinery & Dress-making	425.87	
313	Wallpaper, Paints & Glass	1,616.51	
314	Tobacco	2,230.47	
315	Hardware, Barber Supplies, Gen. Cutlery	14,750.60	
316	Feed, Grain, Produce, Flour & Poultry	8,513.42	
317	Confectionery, Soft Drinks, Water	1,965.95	
318	Plumbers—Heating Supplies	4,475.98	
319	Autos & Accessories, Bicycle Supplies & Sporting Goods	42,740.04	
320	Drugs	13,201.48	
321	Oil Well Supplies	4,229.48	
322	Office Supplies & Equipment	1,492.79	
323	Shoes	7,615.43	
324	Florists	960.27	
325	Electrical Supplies	1,519.41	
326	Bldg. Supplies, Roofing, Tinners, Sand, Gravel	6,260.03	
327	Specialties, Sewing Machines, Adding Machines, Typewriters	2,339.77	
328	Dental Supplies	234.30	
329	Books, Stationery, News Stand, Photographic Supplies	2,739.30	
330	Food Products, Yeast, Butter, Eggs, Milk & Dairy	2,660.06	
331	Machinery	1,304.57	
332	Pianos & Musical Instruments	3,509.08	
333	Explosives—Chemicals	826.81	
334	Wood Products, Cork, etc.	171.68	
335	Ice & Coal Dealers, Wood	1,771.07	
336	Distributors of Elec. Energy & Nat. Gas	2,874.72	
337	China & Glassware	83.54	
338	Oil & Gasoline	726.30	
339	Stock Dealers	1,178.71	
342	Junk Dealers	76.90	
700	Casual Sales	12,663.55	
	Total		$ 408,963.79

Selling Tangible Property (by wholesalers)

401	Oil, Gas, Elec., Plumbing & Heating Supplies	$ 1,611.09	
402	Coal Jobbers	1,062.35	
403	Hardware, Barber Supplies & Paints	8,136.45	
404	Groceries & Meats	16,490.79	
405	Dry Goods, Notions—Millinery Furnishings	6,892.68	
406	Drugs	5,887.38	
407	Fruits, Produce, Grain, Feed & Flour	5,750.77	
408	Shoes	668.83	

409	Confectioners	1,506.90	
410	Furniture	640.51	
411	Mine & Mill Supplies	2,096.31	
412	Lumber	1,701.26	
413	Tobacco & Tobacco Products, News	266.49	
414	Autos & Auto Accessories	302.70	
415	General Merchandise	593.03	
416	Leather	394.91	
417	Paper Products & Paper	331.71	
418	Glass & China	13.17	
419	Builders Material—Elec. Supplies	274.23	
420	Clothing	50.34	
421	Jewelers	14.71	
422	Beverages, Mineral Water	53.32	
423	Power & Light	54.86	
424	Explosives—Chemicals	521.90	
	Total		$ 55,316.69

Engaging in Business by Banks and Certain Public Utilities

501	Banking, Savings & Loans	$ 20,183.43	
502	Railroads, Express Co., Water Transportation	79,879.62	
503	Water Companies	6,845.58	
504	Telephone & Telegraph Cos	9,197.68	
	Total		$ 116,106.31

Engaging in Business and Professions Not Included in Previous Sections

601	Hotels, Restaurants, Pullman Cars, Tea Rooms	18,209.92	
602	Renting Buildings	1,572.57	
603	Contractors, Architects, Tree Experts	32,583.44	
604	Motion Pictures & Theatres	5,011.70	
605	Garages, Gasoline Stations, Taxi, Transfer Storage	8,061.79	
606	Leasing Lands, Coal Lands, Gas	9,375.12	
607	Painting & Decorating	332.01	
608	Insurance Agencies	5,655.61	
609	Machine Shops	1,052.62	
610	Laundries, Dry Cleaning, Shoe Repairing	3,605.60	
611	Real Estate and Sales Agents	7,956.63	
612	Bridge Companies and Ferries Harbors	819.04	
613	Engineering—Geologist	1,111.51	
614	Holding and Investment Companies	1,781.49	
615	Hospitals and Training Schools	1,280.46	
616	Optometrists	100.20	
617	Brokers, Stocks, Bonds, Manufacturing Agents & Com. Agents	1,733.31	
618	Nat. Gas Distributors, Heat & Light	611.20	
619	Coal & Coke Sales Agencies, Brokers	2,266.81	
620	Lawyers—Shorthand Reporters	964.33	
621	Pool and Billiard Rooms, Annual Concessions	1,035.27	

622	Physicians, surgeons, osteopathists	1,421.59	
623	Barber Shops, Chiropodists, Hair Dressers	165.21	
624	Detective Agencies	.....	
625	Photographers and Supplies	72.81	
626	Loan Companies and Pawn Brokers	402.39	
627	Accountants, Auditors, Income Tax Experts	170.89	
628	Advertising and Bill-posting	493.73	
629	Schools	175.48	
630	Blacksmiths, Wagons and Parts	72.88	
640	Orchards	285.96	
641	Farmers	723.89	
	Total		$ 109,105.46

RECAPITULATION

100	Production of Minerals	$ 1,196,206.36	
200	Manufacturing	634,221.38	
300	Selling Tangible Property (except by wholesalers)	408,963.79	
400	Selling Tangible Property (by wholesalers)	55,316.69	
500	Engaging in Business by Banks & Certain Public Utilities	116,106.31	
600	Engaging in Business & Professions Not Included in Previous Sections	109,105.46	
	TOTAL		$ 2,519,919.99

In addition to adjustment of rates it will probably be found advisable to change the law in other respects.

PENALTIES

I am of the opinion that the law should be amended to provide reasonably heavy penalties for failure to make the returns required. This suggestion is made, not that the State may obtain more revenue by reason of the imposition of penalties, but that the tax commissioner may advise persons, firms and corporations liable under the act for the tax that no returns need be filed unless their gross sales or their gross income, as the case may be, exceed the authorized exemption. Under the present law with insufficient penalties, practically no penalty at all being provided, it seems necessary to require returns from all persons engaged in business regardless of whether or not their gross sales or gross income amounts to the amount of the exemption provided. Thousands of returns, of course, are received showing no tax due. They cause additional work on the part of the department, as well as additional expense in sending out blanks and having them filed, not to say anything of the extra work

and annoyance on the part of those persons who are in business whose gross sales or gross income do not exceed the amount of the exemption. The state prefers not to collect penalties, but if the penalty provisions are inserted in the law and the taxpayers have due notice that in case their gross income or gross sales exceed $10,000 a return must be filed, otherwise not, it then devolves upon the taxpayer to comply with the law and to pay any penalty for failure so to do.

SALES OF REAL ESTATE

After a year's experience in the administration of the sales tax law, the different privilege taxes levied thereunder, insofar as they relate to persons engaged in business, have been found to operate smoothly, and it has been my purpose in administering the law to so interpret it as to render its operation as uniform and as equitable as is found consistent with the terms and the rates of levy provided by the act.

There is, however, a large class of taxpayers whom it is exceedingly difficult to reach—persons liable under section 2-b of the law for the privilege of selling tangible property, real or personal—who are not engaged in the business of selling, and who exercise the taxable privilege of selling for the most part for the purpose of disposing of real estate holdings, such as lands obtained by inheritance or otherwise, houses and lots and homes. The only method by which it is possible for this department to obtain any information with reference to these casual sales is by referring to the deeds recorded in the several counties of the State. For this purpose members of the clerical force and field agents were sent to the several county seats of the State to obtain complete reports of all deeds recorded during the tax year, showing dates of sales of real estate occurring after the law took effect. The amount of the consideration shown by the deeds was noted, and after obtaining an alphabetical classification of all names, so that a close estimate could be made of the total sales made by each individual or group of individuals, blanks and instructions were sent out to all prospective taxpayers. It was found from the lists obtained that a comparatively small proportion of the sales of real estate made by taxpayers exceeded the exempted amount of $10,000. In the small counties for instance, after going to the expense of sending an agent to make the required list of deeds,

possibly only one or two sales were found to have been made in excess of the $10,000 exemption. In the larger counties, such as Kanawha, where transactions in real estate are numerous, it is surprising to note how great a proportion of the sales are made by comparatively few individuals or companies. All of which means that the preliminary work necessary to start the collection of this tax involves an expenditure that is quite out of proportion to the results obtained therefrom.

However, after obtaining these lists of prospective taxpayers who apparently made sales of real estate in excess of $10,000 during the tax year, this department was confronted with the following:

(1) A great many sales of real estate, some of them involving very large considerations, have been made by parties who have disposed of their holdings and left the state permanently. The question of collecting the taxes due the State of West Virginia, unless the taxpayer is disposed to pay without suit, is a very serious one and likely to involve suits in the Federal Court.

(2) Many deeds are found on record which dispose of valuable property, and which, in my opinion, do not represent sales within the meaning of the law. This often appears in the case of partnerships desiring to transfer their holdings to an incorporated company in which they hold stock in proportion to their partnership interests; in the case of an estate being partitioned to heirs and other transactions of similar nature.

(3) Sales made by special commissioners, under orders of court on behalf of minors and other parties involved in chancery suits. The taxes are not due until thirty days after the close of the tax year, and by that time many of the chancery suits have been finally disposed of and the collection of taxes proves difficult if not impossible.

(4) Where individuals owning undivided interests in real estate join together for the purpose of making sales of their combined holdings it has been the practice of this department to require a joint return and to allow but one exemption of $10,000. This holding has been questioned very generally by lawyers who take the position that as the word taxpayer is defined by the act as "any individual, corporation or association liable for any tax hereunder" the individuals joining in the sale of real estate should be permitted to make their return of the amount realized from their interest only,

thereby treating the sale of each interest as a separate sale, and claiming a separate exemption at the rate of $10,000 annually for each individual.

(5) The exemption under the sales tax law is $10,000 annually to each taxpayer. If a person is engaged in business for only six months his exemption is reduced proportionately, but applying to persons making casual sales of real estate, the exemption of $10,000 *annually* has the effect of exempting probably ninety-five (95%) per cent. of the sales of real estate made during the course of the year.

(6) Section 5 of the sales tax law gives taxpayers making sales of tangible property on account of sales in which the payment of a part of the consideration is deferred beyond the current tax year, the option of reporting on the cash received basis. If the construction placed upon the Act by many taxpayers be correct, it would mean that a party making a deed to real estate valued at $100,000, of which $10,000 of the consideration was paid in cash, and $10,000 evidenced by notes payable one each year for nine years, is entitled to claim $10,000 exemption for each of the ten years, thereby escaping taxation. While the law is susceptible to two very different constructions, the holding of this department has been that section 5 refers only to conditional sales made under contract whereby the title to the property remains in the vendor until all deferred payments have been met. Under this construction the application of Section 5 would be practically restricted to persons engaged in installment businesses and would very seldom apply to casual sales of real estate.

Whether any tax should be collected on account of casual sales of real estate is a matter open to debate and due consideration must be given the question of whether or not those making casual sales may be exempted without impairing the validity of the law. Personally, I am of the opinion that the tax should be imposed only on those engaged in the real estate business and that the making of incidental sales of real estate should not be considered as such a privilege as the State would tax. If the Legislature is of the opinion that the tax on casual sales should be continued, however, it should provide a simpler method for the collection thereof, and I have in mind in this respect the Federal law which imposes a stamp tax on conveyances which exempts transfers of less than $100 and requires stamps in the amount of fifty cents to be attached to deeds, docu-

ments and writings where the consideration is $100 and does not exceed $500, and fifty cents for each additional $500.

MANUFACTURING

This office has experienced some difficulty in the administration of the tax law in the case of foreign corporations which send raw materials into West Virginia to be manufactured by affiliated or subsidiary corporations, due to the fact that the subsidiary corporation does not own the materials manufactured and makes the claim that it is not engaged in the *business* of manufacturing, and for that reason should be classed as a contractor, using the price paid by the foreign corporation for the operations conducted in West Virginia as the measure of the tax. It is recommended that lines 13 and 14 of Section 2 of Chapter 110, Acts 1921, be amended so as to read "manufacturing, compounding or preparing for sale", leaving out the words "engaging or continuing within this State, in the business of."

WHOLESALERS

The present method of taxing persons engaged in the wholesale business has been found to be cumbersome as well as inequitable. Statistics show that wholesalers would have paid only sixty-five per cent more under the sales tax law for the year 1920 than was actually paid by them under the old corporate net income law, while retailers would have paid two hundred and seventy-eight per cent more under the new law than they paid under the old. Furthermore, the exemption of interstate business, the adjustments necessary to arrive at the gross income from intrastate business, and the segregation of wholesale and retail sales where both are made by one concern, results in much unnecessary additional work both to the State and to the taxpayer; and I would recommend that the levy be laid on the gross sales at an equitable rate, with proper recognition of the fact that sales of wholesalers yield a smaller gross profit than sales of retailers. This change in the law would do away with many difficulties experienced under the present law.

BANKS, BANKING INSTITUTIONS, TRUST COMPANIES AND PROFESSIONS

It has been shown, I believe conclusively, that these classes of taxpayers are not paying their proportionate share of the tax; this

is occasioned largely from the fact that the amounts required to be returned by banks consist of such items as interest, discount and dividends—gross income resulting largely from the sale of *service*; whereas, the tax for the privilege of *selling* property falls for the most part on gross receipts which are made up principally of the value of the materials and commodities sold. The net profit from the sale of service is extraordinarily high as compared with the gross profit from such sale and as compared with the net profit realized by those engaged in the business of buying and selling property. The present law provides the same rates for these classes of taxpayers as those engaged in the business of buying and selling.

The same argument given with respect to banks with reference to the taxable amount consisting of the sale of services applies especially to professional services. Outside of the office maintenance and necessary expense incurred on account of equipment, the income derived from professional service largely consists of net income, and for this reason the tax should be increased in proportion to the ability of the taxpayer to pay. For instance, a doctor with a professional income of $10,000 is not subject to any tax. Assuming that his expense amounts to one-third of his gross income, his net income is $6,666.66, while in the case of the average retailer, to produce a net income of $6,666.66, he would have to do a business amounting to, say, $40,000, upon which his taxes, after deducting the $10,000 exemption, would amount to $60 against the professional man's total exemption.

RAILROADS AND PUBLIC UTILITIES

Transportation concerns doing an interstate business are not paying a just proportion of the tax under the sales tax law. Statistics show that interstate railroads would have paid for the year 1920 a sales tax of only $43,080 as against the excise tax on corporate net income for that year of $42,263, an increase of only 2%; that of the above amount of $43,080 the Baltimore and Ohio Railroad Company (a company not paying a large amount of excise tax) would have paid $17,580; that leaving out of consideration the Baltimore and Ohio and the Western Maryland Railroads (non-payers of excise tax, it may be said) the interstate railroads would have paid for 1920 under the sales tax law $24,570 as compared with excise tax on corporate net income of $42,228, a decrease of 72%; that pipe-line companies would have paid sales tax of $1,402 for that year as

against excise tax on corporate net income of $4,641, a decrease of 231%, and that intrastate railroads would have paid $18,018 under the sales tax law as compared with excise tax payments of $4,958, an increase of 263%.

These figures convince me that the rate and method of taxation provided in the sales tax law do not sufficiently tax the interstate public service corporations in comparison with other classes of business. A much fairer and more equitable method as to the interstate carrier would be one based, as in the present law, on gross income, and the gross income apportioned on a mileage or other basis which would allocate to the State of West Virginia its proper share of the gross income. Such a method would have produced the following results (based on figures for six of the largest interstate railroad and pipe-line companies, but leaving out of consideration the Baltimore and Ohio and the Western Maryland Railroads): Excise tax 1920, $43,303, sales tax for 1920, $130,616, an increase of sales tax over the excise tax of 201%; whereas, if the present Sales Tax law had been in operation in 1920 the yield therefrom would have been $21,140 as against $43,303 from the Excise Tax law, a decrease of 105%.

LOG AND TIMBER CLASSIFICATION

I would recommend that those engaged in the production of logs and timber be included in class A1—the production class, and made subject to the rates imposed thereunder, as such activity depletes the natural resources of the State.

I shall be glad to place at your disposal any additional information at my command which may be desired in order that there may be a thoroughly comprehensive report of the operation of the Sales Tax law.

Respectfully submitted,

WALTER S. HALLANAN,

State Tax Commissioner.

24322

END OF
TITLE